

Under the provisions of Section 413.031 of the Texas Workers' Compensation Act, Title 5, Subtitle A of the Texas Labor Code, effective June, 2001 and Commission Rule 133.305 titled Medical Dispute Resolution- General, 133.307 titled Medical Dispute Resolution of a Medical Fee Dispute, and 133.308 titled Medical Dispute Resolution by Independent Review Organizations, the Medical Review Division assigned an IRO to conduct a review of the disputed medical necessity issues between the requestor and the respondent. The disputed dates of service 5-12-03 through 5-16-03 are untimely and ineligible for review per TWCC Rule 133.308 (e)(1) which states that a request for medical dispute resolution shall be considered timely if it is received by the Commission no later than one year after the dates of service in dispute. This dispute was received on 5-18-04.

The IRO reviewed work hardening from 6-11-03 to 6-20-03.

The Medical Review Division has reviewed the IRO decision and determined that the **requestor prevailed** on the issues of medical necessity. Therefore, upon receipt of this Order and in accordance with §133.308(r)(9), the Commission hereby orders the respondent and non-prevailing party to **refund the requestor \$460.00** for the paid IRO fee. For the purposes of determining compliance with the order, the Commission will add 20 days to the date the order was deemed received as outlined on page one of this Order.

In accordance with §413.031(e), it is a defense for the carrier if the carrier timely complies with the IRO decision.

This dispute also contained services that were not addressed by the IRO and will be reviewed by the Medical Review Division. On 7-1-04, the Medical Review Division submitted a Notice to requestor to submit additional documentation necessary to support the charges and to challenge the reasons the respondent had denied reimbursement within 14 days of the requestor's receipt of the Notice.

Codes 97545-WH-AP and 97546-WH-AP billed for dates of service 5-19-03 through 6-10-03 had no EOB submitted by either party. Per Rule 133.307(e)(2)(B), the requestor shall include a copy of each EOB, or if no EOB was received, convincing evidence of carrier receipt of the request for an EOB. Requestor submitted convincing evidence of carrier receipt of request for reconsideration.

Per Rule 133.308 (h), the carrier shall file their initial response within 14 days. The initial response was due on 6-2-04 and the response was received on 7-8-04. Therefore, the response is untimely and will not be considered in this review. Per Rule 133.307(e)(3)(B), the carrier is required to provide any missing information including absent EOBs not submitted by the requestor. The carrier's initial response to the medical dispute included the missing EOBs; however, it was untimely received; therefore this review will be per the 1996 Medical Fee Guideline.

- Code 97545-WH-AP – the MAR is \$64.00/hour for CARF accredited. Requestor billed the initial two hours. Recommend reimbursement of \$128.00 x 15 days = \$1,920.00
- Code 97546-WH-AP – the MAR is \$64.00/hour for CARF accredited. Requestor billed six hours each day. Recommend reimbursement of \$64.00 x 6 = \$384.00 x 15 days = \$5,760.00.

The above Findings and Decision is hereby issued this 9th day of November 2004.

Dee Z. Torres
Medical Dispute Resolution Officer
Medical Review Division

ORDER

On this basis, and pursuant to §§402.042, 413.016, 413.031, and 413.019 of the Act, the Medical Review Division hereby ORDERS the Respondent to pay the unpaid medical fees outlined above as follows:

- In accordance with the fair and reasonable rate as set forth in Commission Rule 133.1(a)(8) for dates of service through July 31, 2003;
- plus all accrued interest due at the time of payment to the requestor within 20 days of receipt of this Order.

This Order is applicable to dates of service 5-19-03 through 6-20-03 as outlined above in this dispute.

The respondent is prohibited from asserting additional denial reasons relative to this Decision upon issuing payment to the requestor in accordance with this Order (Rule 133.307(j)(2)).

This Order is hereby issued this 9th day of November 2004.

Hilda H. Baker, Manager
Medical Dispute Resolution
Medical Review Division

August 16, 2004

David Martinez
TWCC Medical Dispute Resolution
4000 IH 35 South, MS 48
Austin, TX 78704

Patient:

TWCC #:

MDR Tracking #:

IRO #:

M5-04-3103-01

5251

Ziroc has been certified by the Texas Department of Insurance as an Independent Review Organization. The Texas Worker's Compensation Commission has assigned this case to Ziroc for independent review in accordance with TWCC Rule 133.308 which allows for medical dispute resolution by an IRO.

Ziroc has performed an independent review of the care rendered to determine if the adverse determination was appropriate. In performing this review, all relevant medical records and documentation utilized to make the adverse determination, along with any documentation and written information submitted, was reviewed.

The independent review was performed by a matched peer with the treating doctor. This case was reviewed by a licensed Doctor of Chiropractic. The reviewer is on the TWCC Approved Doctor List (ADL). The Ziroc health care professional has signed a certification statement stating that no known conflicts of interest exist between the reviewer and any of the treating doctors or providers or any of the doctors or providers who reviewed the case for a determination prior to the referral to Ziroc for independent review. In addition, the reviewer has certified that the review was performed without bias for or against any party to the dispute.

CLINICAL HISTORY

This patient was injured on her job at ___ when she slipped and fell, causing low back, right shoulder and knee pain. She underwent a surgical decompression of the shoulder as well as an open repair of the rotator cuff in March of 2002. CT of the shoulder was performed in July of 2002 due to continued pain and stiffness, but it was negative for pathology. However, there was a MRI that was apparently performed that indicated a suture that was in need of removal. As a result, a second arthroscopic procedure was performed in September of 2002. The RME by Dr. C, recommended light duty. Functional testing indicated that the patient was only capable of sedentary duty. Mental health evaluations indicated that the patient was depressed mildly with a mild anxiety disorder. FCE reports indicate that the patient progressed from sedentary to light in the work hardening program. She was found at MMI by Dr. B on July 11, 2003 with a 3% whole person impairment.

RECORDS REVIEWED:

Work hardening notes, provider's appeal letters, peer reviews from PRI performed by Dr. M, RME of Dr. C, orthopedic reports of Dr. T, designated doctor report of Dr. B, FCE reports of the

requestor, FCE report by Dr. P, peer review of Dr. A, office notes of Dr. S and mental health assessments from ____, LMFT.

DISPUTED SERVICES

The carrier has denied the medical necessity of work hardening from June 11, 2003 through June 20, 2003.

DECISION

The reviewer disagrees with the prior adverse determination.

BASIS FOR THE DECISION

The patient had 2 surgical procedures and was off of work for an extended period of time. Documentation clearly shows that the patient was deconditioned and there is no credible evidence to refute that finding. The FCE's indicate that the patient made progress in the work hardening program, albeit not as much as one would hope, but she was at least able to perform light duty work. This would be a significant improvement after the amount of time off of work and the amount of treatment rendered that clearly did not work prior to the work hardening program. The peer review by PRI's reviewer failed to note his reasoning for declining the work hardening program's necessity. He simply stated that since care had been previously declined then the work hardening program would not be necessary. The reviewer disagrees with this assessment, as there is considerable evidence that the patient qualified for the program, including an assessment by a mental health provider, that the work hardening program was reasonably approached by the provider. While it is troubling that the patient was unable to go back to a solid medium/heavy work ability, the end point is not the criteria for work hardening. The admission point is used to determine medical necessity and this patient clearly met the TWCC criteria for entrance to the program. As a result, the care is found to be reasonable and necessary.

Ziroc has performed an independent review solely to determine the medical necessity of the health services that are the subject of the review. Ziroc has made no determinations regarding benefits available under the injured employee's policy

As an officer of ZRC Services, Inc, dba Ziroc, I certify that there is no known conflict between the reviewer, Ziroc and/or any officer/employee of the IRO with any person or entity that is a party to the dispute.

Ziroc is forwarding this finding by US Postal Service to the TWCC.

Sincerely,